IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.968 OF 2001
IN
SUMMARY SUIT NO.1516 OF 2001

B.B. Naik ....Plaintiff
V/s.
Electrex (I) Ltd. & Anr. ....Defendants

Mr.B. Saraf i/b Mr.H.V. Chande for the Plaintiff.
Mr.P.C. Kansare i/b Kansara & Thanekar for Defendant Nos.1, 4, 9 and 11.
Mr.S. Nagvadaria for Defendant Nos.2 and 3.
Mr.V.T. Rathod, Head Clerk of Registrar of Firms present.

CORAM : S.J. VAZIFDAR, J.
DATED : 12TH DECEMBER, 2005.

P.C. :

1. The suit is filed to recover the amounts lent and advanced by the Plaintiff to Defendant No.1. The suit is based on eight bills of exchange of Rs.1,00,000/- each. Defendant No.1 is the drawer. Defendant Nos.2, 3, 10 and 11 are the acceptors of the bills of exchange. Defendant Nos.4 to 9 are the partners of Defendant No.3. One D.V. Sathe is impleaded as Defendant No.9 in his capacity as partner of Defendant No.3 and as Defendant No.11 in his individual capacity as one of the acceptors of the bills of exchange.

2. The present Summons for Judgment is taken only against Defendant Nos.1 to 5 and 9 to 11.

3. In respect of Defendant No.1, a reference is pending before the B.I.F.R. The Summons for Judgment as against Defendant no.1 is dismissed with leave to take out fresh Summons for Judgment, if occasion arises. The Plaintiff has compromised the suit with Defendant No.10. Defendant No.10 has paid Rs.3,00,000/- towards part payment of the suit claim and the Plaintiff has discharged them of their liability in accordance with the consent terms filed between the Plaintiff and Defendant No.10. Thus the Summons for Judgment as against Defendant No.10 is dismissed. Mr.Saraf, the learned counsel appearing on behalf of the Plaintiff concedes that there is no proof at present that Defendant No.5 is the partner of Defendant No.3. Hence unconditional leave to Defendant No.5 to defend the suit has been granted subject to the right of the Plaintiff to execute a decree, if any, against Defendant No.5 as the partner of Defendant No.3 in the event of Defendant No.5 being found to be a partner.

4. The first defence on behalf of the contesting Defendants before me was that the bills of exchange

were signed in blank. In this regard, the allegations have been made against one Panchmatia a broker, who it is alleged had taken from the Defendants various documents which were signed in blank. A similar contention, it was conceded, was rejected by an order and judgment of D.K. Deshmukh, J. dated 10th December, 2002 in a group of Summons for Judgment taken out in various Summary Suits, the first of which was Summons for Judgment No.942 of 2000 in Summary Suit No.1410 of 2000. It was fairly conceded without prejudice to the rights and contentions of the Defendants, that the observations in this regard would apply equally to the present case. The Appeals from the said order have been admitted and are pending in this Court.

5. On behalf of Defendant No.2, it was submitted that D.V.Sathe i.e. Defendant No.9, who had accepted the bills on their behalf was not a Director. This contention is not correct. There are various documents on record, which belie the contention. All the said bills of exchange were executed in 3rd March, 1998. For instance Exhibit "C" to the rejoinder is the concerned return of Defendant No.2, Coloro-id Instasystems (India) Pvt.Ltd., for the year ended 31st March, 1997. The same contains the name of Defendant

No.9 as one of its Directors appointed on 26th August, 1985. Exhibit "D" to the to the said rejoinder is a cheque dated 14th December, 1998, signed by Defendant No.9 as Managing Director. Exhibit "E-1" is a letter addressed on 1st June, 1998 signed on behalf of Defendant No.2 by Defendant No.9 as its Managing Director. Further the annual return of Defendant No.1 up to 22nd August, 1998 and balance-sheet of Defendant No.2 for the year ended 31st March, 2000 showed Defendant No.9 as the Director of Defendant No.2.

6. Initially it was contended at the earlier hearing before me that Defendant No.9 ceased to be a Director of Defendant No.2 in 1993 after which he was never a Director of Defendant No.3. In view of this statement, I had adjourned the matter directing the parties to produce the relevant record of Defendant No.2. They refused to do so despite the request being repeated. Today I was informed that the records are not available as Defendant No.2 has not maintained the records properly. An adverse inference in these circumstances is not unjustified to the effect at the relevant time Defendant No.9 was a Director of Defendant No.2.

7. As regards Defendant No.3, it was contended

that the said D.V. Sathe i.e. Defendant No.9 was not a partner of Defendant No.3, on whose behalf he has accepted the suit bills of exchange. To verify this contention, I summoned an officer from the Registrar of Firms with records. It was not stated that the firm was not registered. An officer from the Registrar of Firms appeared today. It appears that Defendant No.3 is not a registered firm. It is pertinent to note that the documents such as partnership deed and the changes, if any, in the constitution of the firm have not been produced. For this reason too, an adverse inference to the effect that Defendant No.9 was a partner of Defendant No.3 is justified.

8. Moreover, it is pertinent to note that Defendant No.9 has signed various documents on behalf of Defendant No.3 as its partner. Exhibit "E" to the said rejoinder is another bill of exchange which was accepted on behalf of Defendant No.3 - M/s.Indian International by Defendant No.9 as a partner of Defendant No.3. The said letter dated 1st June, 1998 (Exhibit "E-1" to the rejoinder) was also signed by Defendant No.9 as the partner of Defendant No.3. Another bill of exchange dated 24.2.1997 was accepted on behalf of Defendant No.3 by Defendant No.9. Lastly

a bill of exchange dated 6th March, 1998 i.e. only three days after the suit bills of exchange were drawn by Defendant No.9 as a partner on behalf of Defendant No.3 was signed by Defendant No.9 as a partner of Defendant No.3.

9. Similarly Defendant No.9 also executed the letters dated 6th March, 1998 and 15th April, 1998 as partner of Defendant No.3.

10. As far as Defendant No.4 - Anant Hegde is concerned, it was denied the he was the partner of Defendant No.3. Defendant No.4 has also signed various documents as the partner of Defendant No.3. Exhibit "A" to the rejoinder is a letter dated 19th March, 1998 i.e. sixteen days after the said bills of exchange, signed by Defendant No.4 as a partner of Defendant No.3. He has accepted the bill of exchange dated 2.4.1997 (Exhibit "B" to the said rejoinder) on behalf of Defendant No.3. He has executed a letter dated 2.4.1997 as partner of Defendant No.3 (Exhibit "B-1" to the rejoinder). Lastly he has executed a letter dated 19th March, 1998 as partner of Defendant No.3.

11. Each of the documents that I have referred to

above were formal documents. There is no explanation whatsoever why Defendant No.9 and Defendant No.4 executed these documents for and on behalf of Defendant Nos.2 and 3, if they were neither the Directors or the partners thereof as the case may be.

12. After the arguments were over, Mr.Kansara, the learned counsel appearing on behalf of Defendant Nos.1, 4, 9 and 11 sought time to file a further affidavit to annexe further documents. I rejected the application for adjournment. The matter had been adjourned several times in the past. These adjournments were to enable the Defendants to produce the records regarding the constitution of the Company and the firm. I saw no reason to grant another adjournment especially when the application was made after the matter had been fully argued.

13. The Defendants shall however be entitled to credit in the sum of Rs.3,00,000/- paid on 26.8.2003. Needless to add that the interest on the said sum of Rs.3,00,000/- shall also cease with effect from 26.8.2003.

14. In the circumstances and in view of the said order and judgment of D.K. Deshmukh, J. dated 10th

December, 2002, the Summons for Judgment is granted. The suit is decreed as prayed against Defendant Nos.2, 3, 4, 9 and 11.

15. The Summons for Judgment as against Defendant No.1 is allowed to be withdrawn with liberty to file a fresh Summons for Judgment if occasion arises. Defendant No.1 is directed to keep the Plaintiff informed about the progress of the proceedings before the B.I.F.R.

16. Defendant No.5 is granted unconditional leave to defend the suit. The suit is transferred to the list of commercial causes. Defendant No.5 to file his written statement within four weeks from today. Discovery and Inspection to be completed within six weeks thereafter. Summons for Judgment stands disposed of accordingly as against Defendant No.5.